IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 12TH APRIL 2007 / 22ND CHAITHRA 1929

Crl.MC.No. 1163 of 2007()

LP.9/1999 of JUDL.MAGISTRATE OF FIRST CLASS COURT, THIRUVALLA

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PETITIONER:

SUJATHA KUMAR @ RAMANAN,
S/O NARAYANA PILLAI, ADICHIRA VEEDU,
KUTTOOR, THIRUVALLA.

BY ADV. SRI.MVS.NAMBOOTHIRY

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 1163 of 2007

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Dated this the 12th day of April, 2007

O R D E R

The petitioner is the 4th accused in a prosecution under Section 302 r/w. 34 I.P.C. The alleged occurrence took place in 1995. The petitioner was granted anticipatory bail as per Annex.I order. Final report was filed and the committal proceedings were registered in 1996. The Sessions Case was registered in 1997. As the petitioner was not available for trial, the trial against the co-accused proceeded. One of them was found guilty and convicted and the others were found not guilty and acquitted. The proceedings is now pending as committal proceedings. The petitioner has not appeared before the Investigating Officer or the learned Magistrate, inspite of Annex.I order. At this belated hour, the petitioner wants to surrender before the learned Magistrate. The learned counsel for the petitioner submits that the petitioner apprehends that the learned Magistrate may not consider his application for bail on merits, in accordance with law and expeditiously.

2. The learned counsel further points out that in the judgment rendered by the learned Sessions Judge, which has been upheld by this Court later, there has been categoric observations, which would indicate that the petitioner is not guilty of any offence. The short prayer of the petitioner is that the learned Magistrate may be directed to consider his application for bail on merits and dispose of the same expeditiously. There may be a positive direction to grant bail to the petitioner, it is further prayed.

3. I am of the opinion that the petitioner must appear before the learned Magistrate and apply for bail. He must explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. He must also advance his contention when the application is considered that he is entitled for bail. In advancing this contention, needless to say, he can rely on the earlier order of anticipatory bail passed by the learned Sessions Judge as also the observations in his favour rendered by the Sessions Judge in the trial judgment and this court in the appellate judgment. Suffice it to say that the learned Magistrate must consider the application on merits and expeditiously. I have no reason to assume that the learned Magistrate would not do the same.

3. This Crl.M.C. is accordingly dismissed, but subject to the observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

4. Hand over copy of the order.

(R. BASANT)
Judge

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